

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

-----X
DERRICK ROBINSON,

Index No.

Plaintiff,

- against -

VERIFIED COMPLAINT

THE CITY OF NEW YORK, EDWIN ESPINAL,
and DECLAN LUDINGTON,

Defendants.

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Plaintiff, complaining of the defendants, by his attorneys, SCHMELKIN ASSOCIATES, P.C., hereby sets forth and alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. That, at all times hereinafter mentioned, and on or about August 24, 2014, the plaintiff, **DERRICK ROBINSON**, was and still is a resident of the County of Bronx, City and State of New York.

2. That, at all times hereinafter mentioned, and on or about August 24, 2014 the defendant, **THE CITY OF NEW YORK**, (hereinafter referred to as "**THE CITY**") was and still is a domestic municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.

3. That, at all times hereinafter mentioned, and on or about August 24, 2014 the defendant, **EDWIN ESPINAL**, (hereinafter referred to as "**ESPINAL**"), was and still is a resident of the City

and State of New York.

4. That, at all times hereinafter mentioned, and on or about August 24, 2014 the defendant, **DECLAN LUDINGTON**, (hereinafter referred to as "**LUDINGTON**"), was and still is a resident of the City and State of New York.

5. That, the plaintiff, **DERRICK ROBINSON**, has complied with all the conditions precedent to the commencement of the within action against the defendant, **THE CITY**; plaintiff's Notice of Claim, Amended Notice of Claim and Supplemental Notice of Claim were served on September 24, 2014, November 12, 2014 and January 22, 2015, respectively, within ninety (90) days of the date that the within cause of action having been caused to accrue; that thirty (30) days have elapsed and the claim remains unpaid and unadjusted; that, the plaintiff, **DERRICK ROBINSON**, testified at an oral examination pursuant to the General Municipal Law on October 20, 2015; and, that this action is being commenced herewith within one (1) year and ninety (90) days of the date that the within cause of action having been caused to accrue.

6. That on or about August 24, 2014 the plaintiff, **DERRICK ROBINSON** was in apartment 3G of premises known as 1682 Seward Avenue, in the County of Bronx, City and State of New York.

7. That the plaintiff, **DERRICK ROBINSON**, was sleeping, at the aforementioned location, at approximately 3:30 A.M.

8. That the plaintiff, **DERRICK ROBINSON**, was woken by the defendants, their agents, servants, and/or employees, and was

questioned.

9. That the plaintiff, **DERRICK ROBINSON**, was taken into the hallway by the defendants, their agents, servants, and/or employees, and was questioned.

10. That the plaintiff, **DERRICK ROBINSON**, was arrested, yet was never told the reason for his arrest.

11. That the plaintiff, **DERRICK ROBINSON**, was brought to a police precinct by the aforementioned defendants, their agents, servants and/or employees.

12. That at the 43rd Precinct the plaintiff, **DERRICK ROBINSON**, was fingerprinted and further questioned by the defendants, their agents, servants and/or employees.

13. That the plaintiff, **DERRICK ROBINSON**, had remained at the 43rd Precinct, for an unreasonable amount of time and against his will, by he defendants, their agents, servants and/or employees.

14. That thereafter the plaintiff, **DERRICK ROBINSON**, was taken to central booking where he remained for several hours and thereafter saw a judge, and then was released from custody.

15. The plaintiff, **DERRICK ROBINSON** was caused to appear in Court on several occasions.

16. All charges against the plaintiff, **DERRICK ROBINSON**, were ultimately dismissed on January 12, 2015.

AS AND FOR A FIRST CAUSE OF ACTION

17. That, the plaintiff, **DERRICK ROBINSON**, repeats,

reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 16 with the same force and effect as if hereinafter more fully set forth at length herein.

18. That, on or about August 24, 2014, the plaintiff, **DERRICK ROBINSON**, was assaulted /battered by the defendant, and/or defendants by and through their agents, servants and/or employees.

19. That, the plaintiff, **DERRICK ROBINSON**, was assaulted/battered without justification and without cause and without excuse.

20. That, the assault/battery took place in apartment 3G premises known as 1682 Seward Avenue, in the County of Bronx, City and State of New York, and other locations wherein the plaintiff, **DERRICK ROBINSON** was held against his will by the defendant and/or defendants, their agents, servants and/or employees.

21. That, at all times hereinafter mentioned and on or about August 24, 2014 and for sometime prior thereto, defendant, **ESPINAL**, was a New York City police officer, and/or agent servant and/or employee of the City, working in the scope and course of his employment as a New York City Police Officer, and was employed by the defendant, **THE CITY**.

22. That, at all times hereinafter mentioned and on or about August 24, 2014 and for sometime prior thereto, defendant, **LUDINGTON**, was a New York City police officer, and/or agent servant and/or employee of the City, working in the scope and course of her employment as a New York City Police Officer, and was employed by

the defendant, **THE CITY**.

23. That, the aforementioned assault and battery of the plaintiff, **DERRICK ROBINSON**, was carried out by police officers and/or other servants, agents and/or employees of the defendant, and/or defendants, while working within the scope and course of the employment with the defendant **THE CITY**.

24. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, was injured; was rendered sick, sore, lame and disabled; was and/or will be caused to undergo medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

25. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

26. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION

27. That, the plaintiff, **DERRICK ROBINSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 26 with the same force and effect as if

hereinafter more fully set forth at length herein.

28. That, all of the aforementioned acts, committed by police officers, servants, and/or other employees of the defendant, **THE CITY**, were committed due to the negligence, recklessness and carelessness of the aforementioned police officers, agents, servants and/or other employees of the defendant, **THE CITY**.

29. That the defendant, **THE CITY**, was additionally negligent, reckless and careless in the negligent hiring, negligent retention, and negligent training of various police officers, agents, servants and/or other employees, who were employed by the defendant, **THE CITY**.

30. That, all of the aforementioned acts, committed by the police officers, agents, servants and/or other employees of the defendant, **ESPINAL**, were committed due to the negligence, recklessness and carelessness of the aforementioned police officers, agents, servants and/or employees of the defendant, **THE CITY**.

31. That, all of the aforementioned acts, committed by the police officers, agents, servants and/or other employees of the defendant, **LUDINGTON**, were committed due to the negligence, recklessness and carelessness of the aforementioned police officers, agents, servants and/or other employees of the defendant, **THE CITY**.

32. That, the defendant, **THE CITY**, was additionally negligent, reckless and careless in the negligent hiring, negligent

retention, and negligent training of various police officers, agents, servants, and/or other employees, including, but not limited to defendant, **ESPINAL**, who was employed by the defendant, **THE CITY**.

33. That, the defendant, **THE CITY**, was additionally negligent, reckless and careless in the negligent hiring, negligent retention, and negligent training of various police officers, agents, servants, and/or other employees, including, but not limited to defendant, **LUDINGTON**, who was employed by the defendant, **THE CITY**.

34. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, was injured; was rendered sick, sore, lame and disabled; was and/or will be caused to medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

35. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

36. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A THIRD CAUSE OF ACTION

37. That the plaintiff, **DERRICK ROBINSON**, repeats,

reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 36 with the same force and effect as if hereinafter more fully set forth at length herein.

38. That, on or about August 24, 2014, the plaintiff, **DERRICK ROBINSON**, was caused to be falsely arrested and falsely imprisoned without probable cause.

39. That, the plaintiff, **DERRICK ROBINSON**, was arrested without an arrest warrant.

40. That, the false arrest/false imprisonment took place in Apartment 3G of premises known as 1682 Seward Avenue, in the County of Bronx, City and State of New York, and other locations and wherein the plaintiff, **DERRICK ROBINSON** was held against his will by the defendant and/or defendants, their agents, servants and/or employees.

41. That, the aforementioned false arrest and false imprisonment of the plaintiff, **DERRICK ROBINSON**, was carried out by police officers and/or other servants, agents and/or employees of the defendant, **THE CITY**.

42. That, the aforementioned false arrest and false imprisonment of the plaintiff, **DERRICK ROBINSON**, was carried out by defendant, **ESPINAL**, and/or other servants, agents and/or employees of the defendant, **THE CITY**, while working within the scope and course of the employment with the defendant, **THE CITY**.

43. That, the aforementioned false arrest and false imprisonment of the plaintiff, **DERRICK ROBINSON**, was carried out

by defendant, **LUDINGTON**, and/or other servants, agents and/or employees of the defendant, **THE CITY**, while working within the scope and course of the employment with the defendant **THE CITY**.

44. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, was injured; was rendered sick, sore, lame and disabled; was and/or will be caused to undergo hospital and medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

45. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions as well as the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

46. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A FOURTH CAUSE OF ACTION

47. The plaintiff, **DERRICK ROBINSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 46 with the same force and effect as if hereinafter more fully set forth at length herein.

48. That, the aforementioned false arrest and false imprisonment of the plaintiff, **DERRICK ROBINSON**, was caused due to

a malicious prosecution of the plaintiff, **DERRICK ROBINSON**, without cause, without reasonable cause, and without color of the law.

49. That, the arresting and investigating police, who were police officers, and/or other agents, servants or were other employees of the defendant, **THE CITY**, failed to make a proper and thorough investigation of the facts, failed to make proper inquiries resulting in the false arrest and false imprisonment of the plaintiff, **DERRICK ROBINSON**, was maliciously prosecuted without probable cause, without reasonable cause, and without color of the law.

50. That, upon information and belief, all criminal charges against the plaintiff, **DERRICK ROBINSON**, were ultimately dismissed on January 12, 2015, in the County of Bronx, City and State of New York, before Judge W. Mogulescu, under docket number 2014 BX045666.

51. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, was injured; was rendered sick, sore, lame and disabled; was and/or will be caused to undergo and medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

52. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions as well as the defendant and/or defendants, having acted in reckless disregard for the safety of others.

53. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A FIFTH CAUSE OF ACTION

54. The plaintiff, **DERRICK ROBINSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 53, with the same force and effect as if hereinafter more fully set forth at length herein.

55. That the plaintiff, **DERRICK ROBINSON** did not commit any illegal act, nor did the individually named defendants have reason to believe he committed an unlawful act, either before or at the time he was falsely arrested and imprisoned, assaulted and battered, excessive force was used against him; maliciously prosecuted and deprived of his constitutional rights pursuant to the Fourth, Fifth and Fourteenth Amendments as set forth in the Constitution of the United States, particularly 42 U.S.C. §1983 and the Constitution of the State of New York.

56. That at all times hereinafter mentioned, the defendant, **ESPINAL**, was employed in his respective capacity by the defendant, **THE CITY** and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the defendant, **THE CITY**.

57. That at all times hereinafter mentioned, the defendant, **LUDINGTON**, was employed in his respective capacity by the defendant, **THE CITY** and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the defendant, **THE CITY**.

58. Defendants, **ESPINAL**, and **LUDINGTON**, are being sued in their personal and official capacities for violation of plaintiff's constitutional rights pursuant to 42 USC, §1983. Although defendants knew or should have known of the fact that this pattern of conduct was carried out by their agents, servants and/or employees, the defendant, **THE CITY** has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby, or to take any disciplinary action whatever against any of their employees or agents.

59. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees and each of them, deprived plaintiff, **DERRICK ROBINSON** of the following rights, privileges and immunities secured to him by the Constitution of the United States and of the State of New York: The right of plaintiff, **DERRICK ROBINSON** to be secure in her person and effects against unreasonable search and seizure under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States; the right of plaintiff, **DERRICK ROBINSON**, to be informed of the nature and cause of the accusation against him as secured to him under the Sixth and

Fourteenth Amendments to the Constitution of the United States; and the right of plaintiff, **DERRICK ROBINSON**, not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

60. That the deprivation of plaintiff's Constitutional rights was the result of the unconstitutional acts of defendant while acting under color of state law and within the scope of his employ.

61. That the deprivation of plaintiff's Constitutional rights was the result of the defendant, **THE CITY's** custom and/or policy of arresting individuals without probable cause.

62. That the deprivation of plaintiff's Constitutional rights was the result of the defendant, **THE CITY's** custom and/or policy of arresting minorities without probable cause.

63. That the deprivation of plaintiff, **DERRICK ROBINSON** Constitutional Rights was the result of the defendant, **THE CITY's** custom and/or policy of failing to discipline officers for arresting individuals without probable cause.

64. That the said customs and/or policies may be inferred from the existence of other similar Civil Rights actions that have been brought against the defendant, **THE CITY**.

65. That the detaining of plaintiff, **DERRICK ROBINSON** without probable cause or justification was the result of customs and/or policies adopted by the defendant, **THE CITY**.

66. That the deprivation of plaintiff, **DERRICK ROBINSON**

Constitutional Rights was the result of the defendant, **ESPINAL'S** arrest of the plaintiff **DERRICK ROBINSON** without probable cause.

67. That the deprivation of plaintiff, **DERRICK ROBINSON'S** Constitutional Rights was the result of the defendant, **LUDINGTON'S** arrest of the plaintiff **DERRICK ROBINSON** without probable cause.

68. That the deprivation of plaintiff, **DERRICK ROBINSON'S** Constitutional Rights was a result of the defendant, **THE CITY'S** custom and policy in failing to discipline officers for the use of excessive force.

69. That the deprivation of plaintiff, **DERRICK ROBINSON'S** Constitutional Rights was the result of **ESPINAL'S** use of excessive force.

70. That the deprivation of plaintiff, **DERRICK ROBINSON'S** Constitutional Rights was the result of **LUDINGTON'S** use of excessive force.

71. That the customs and/or policies adopted by the defendant, **THE CITY** exhibited a deliberate indifference to the Constitutional rights of plaintiff, **DERRICK ROBINSON**.

72. That by reason of the allegations as set forth in all of the aforementioned causes of actions, including, but not limited to the plaintiff's false arrest, false imprisonment, assault and battery, malicious as well as prosecution due to the negligence of the defendant and/or defendants, in the negligent hiring, negligent retention, and negligent training of its various employees and/or police officers, the plaintiff, **DERRICK ROBINSON** was

caused to have his civil rights as guaranteed under the U.S. Constitution, including, but not limited to the Fourth, Fifth and Fourteenth Amendments, violated by the defendant and/or defendants herein, as set forth under 42 U.S.C. Section 1983.

73. That, by reason of the foregoing, the plaintiff **DERRICK ROBINSON** was injured; was rendered sick, sore, lame and disabled; was and/or will be caused to undergo medical treatment and advice; was unable to pursue his usual and regular activities; and upon information and belief, his injuries are permanent in nature and effect.

74. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

75. That, by reason of the foregoing, the plaintiff, **DERRICK ROBINSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

WHEREFORE, plaintiff, **DERRICK ROBINSON**, demands judgment against the defendants, on the First, Second, Third, Fourth and Fifth causes of actions in an amount in excess of the jurisdictional limits of all of the lower Courts of the State of New York; together with interest, as well as the costs, disbursements and legal fees pursuant to 42 U.S.C. Section 1988, of these causes of action.

Dated: New York, New York
November 6, 2015

Yours, etc.

SCHMELKIN ASSOCIATES, P.C.
Attorneys for Plaintiff,
DERRICK ROBINSON
Office & P.O. Address
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ATTORNEY'S VERIFICATION

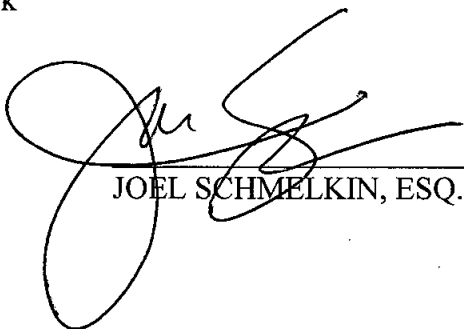
STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

JOEL SCHMELKIN, an attorney admitted to practice law in the State of New York,
states the following:

I am a member with the law firm of SCHMELKIN ASSOCIATES, P.C., the attorneys of record
for the plaintiff in the within action. I have read the foregoing COMPLAINT and know the contents
thereof; the same is true to my own knowledge except as to the matters
therein stated to be alleged on information and belief and that as to those matters, I believe it to be true.
This verification is made by me and not by the plaintiff because the plaintiff does not reside in the
County where Schmelkin Associates, P.C. maintains its office.

The grounds of my belief as to all matters not stated upon my knowledge are
conversations with plaintiff and contents of the file maintained by Schemelkin Associates, P.C.

Dated: New York, New York
November 6, 2015



JOEL SCHMELKIN, ESQ.